IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O. O. C. J.

WRIT PETITION NO.2177 OF 1992

The Late Vaidya Pandit Hariprapanna
Ayurvedic Charitable Trust & Ors. ...Petitioners.
Vs.
The State of Maharashtra & Ors. ...Respondents.
....
Mr. M. L. Bansal for the Petitioners.
Mr. R. M. Sawant, Govt. Pleader for the Respondents.
.....

CORAM : S.RADHAKRISHNAN &
DR.D.Y.CHANDRACHUD, JJ.

November 25, 2004.

P.C.:

Heard the learned counsel appearing for the Petitioners and the Learned AGP for the State. By this petition, the Petitioners have challenged the order of requisition passed by the Accommodation Officer dated 4th March 1954, under the Bombay Land Requisition Act, 1948, with respect to a room situated on the Fourth Floor of Bhaskar Bhavan building. The Petitioners have prayed for a writ of mandamus directing the Respondents to release the said premises from requisition.

2. The Bombay Rents, Hotel and Lodging House Rates

(Control) Act, 1947, has been amended by the Maharashtra Amending Act, 1997. The Supreme Court, in the case of **Maheshchandra Trikamji Gajjar vs. State of Maharashtra**, AIR 2000 SC 1183, has considered the entire scope of the above amendment and has clearly held that if a Government servant in a requisitioned premises were to be in service as on the date on which the aforesaid Maharashtra Amending Act, 1997 came into force, he can be treated as deemed tenant. If the Government servant were not to be in service on the date of the said Maharashtra Amendment Act, 1997, the said persons will have no protection under the Bombay Rent Act. In this behalf paras 14 and 15 of the aforesaid judgment are relevant which read as under:

> "14. It is evident that the object was to protect those who would have been rendered homeless though still in Government service on account of the shortage of accommodation with the Government and it being not possible for the Government to give suitable alternative accommodation to such Government allottees. It is not and cannot be the case of the respondents that even after retirement, the Government had any obligation or policy to provide accommodation to retired employees. If the contention of respondent No.3 that he became a deemed tenant on account of 1997 amendment is accepted, it would show that the Government intended to confer a special benefit of providing residential accommodation to occupants of requisitioned accommodation as a superannuation benefit. That is

clearly not the object of the amendments. If that was so there would be a special class of employees. A class that is allotted, while in service, with accommodation which is requisitioned which class would get the special class of employees. A class that is allotted, while in service, with accommodation which is requisitioned which class would get the special benefit even on superannuation. This class will become tenant under the original owner after retirement with the benefits of all protections under Bombay Rents, Hotel and Lodging House Rates Control Act, 1947. Their heirs and successors may also subject themselves to eviction only on proof of one or the other ground of eviction provided in the Act. Thus, if one is fortunate enough to be allotted accommodation out of the requisitioned premises while in service, he gets by way of superannuation gift, the continued tenancy and others who may not be that fortunate to get allotment of such premises, will have to vacate Government accommodation as per the relevant rules after retirement. We are unable to attribute such an intention to the aforesaid amendments.

15. The deletion of the words 'allowed by the State Government to remain' from clause (b) of Section 5 (1A) by Ordinance dated 26th December 1997 also does not alter the status of an occupant like respondent No.3. The word 'allowed' in the aforesaid provisions may mean some positive sanction and not mere slackness on the part of the Competent Authority in not taking action for getting the premises vacated. It is evident that the accommodation or possession of the premises within the meaning of clause (b) by a person who when allotted was a Government employee has to be on account of some right to occupy or possess the premises. The continued occupation or possession without any such right would not confer on the occupant status of a Government allottee simply on account of such person being in occupation or possession of requisitioned premises even after retirement. The reason for authorities not taking any action to get such premises vacated is

> explainable on account of the said premises being not available for allotment again to any existing government servant. On this account, the authorities may not initiate any proceedings for getting the possession but that would not confer on the occupant the status of 'Government allottee' within the meaning of the term as defined in the Amendment Act. Thus, assuming the Amendments to be valid, we find that no right in favour of respondent No.3 to continue with the possession of the premises even after the invalidity of the order of requisition dated 17th April 1958 and his retirement. Respondent No.3 cannot be treated a deemed tenant."

3. In view of the above judgment of the Supreme Court, and admittedly as the allottee was very much in service at the time of the Maharashtra Amendment Act, 1997 coming into force, the allottee is a deemed tenant and protected. Hence, the petition is devoid of merit and is dismissed. The Petitioners are, however, at liberty to adopt appropriate proceedings against the allottee as per the provisions of the Maharashtra Rent Control Act, 1999.

(S.RADHAKRISHNAN, J)

(DR.D.Y.CHANDRACHUD, J.)